# San Diego City Attorney
# MICHAEL J. AGUIRRE


NEWS RELEASE

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**Contact: Maria Velasquez, Communications Director (619) 235-5725** mvelasquez@sandiego.gov


## CITY ATTORNEY PROPOSES SETTLEMENT TO END PENSION LITIGATION AND RESTORE THE INTEGRITY OF THE CITY'S PENSION SYSTEM FOR EMPLOYEES AND TAXPAYERS

**San Diego, CA:** City Attorney Michael Aguirre announced today that he will be proposing a settlement to end the pension litigation between the City of San Diego and three of the City's unions, the Municipal Employees' Association, San Diego Firefighter's 145 and the American Federation of State, County and Municipal Employees 127.

The proposed settlement seeks to reign in about $500 million of runway costs associated with two pension benefits that were supposed to be cost neutral to the City—pension service credits and the DROP program, as well as the termination of retroactive pension increases.

"The proposed settlement provides employees with only those benefits that were earned or paid for," said City Attorney Michael Aguirre. "Taxpayers expect nothing more and nothing less. I believe the public will agree that these earned benefits need to be funded."

**Pension Service Credits**

The pension service credit program was approved by the City Council in 1996. City employees were allowed to purchase up to five years of pension service credits—for years not actually worked for the City—at a price substantially below what the benefit costs the City to pay.

This has resulted in the San Diego City Employees' Retirement System (SDCERS) having to absorb the $110 million shortfall which is part of the overall $1.43 billion retirement system deficit that the City currently faces.

**Deferred Retirement Option Plan**

Meanwhile, the Deferred Retirement Option Plan (DROP), a retirement program intended to encourage the retention of veteran City employees and save the City money, has been a financial burden. A recent cost analysis has revealed that the 9-year-old DROP program has cost the City over $400 million. Yet, the City's own 1997 ordinance required that DROP could only continue if cost studies indicated it was cost-neutral to the City. However, the City Council amended the ordinance in 2002 to make it permanent at the insistence of labor unions. (MORE)

Eligible participants in the DROP program are City employees who meet both age and service requirements for retirement. These employees remain on the City's payroll for up to an additional five years. During this time, retirement payments are made to their DROP accounts which earn eight percent interest compounded annually regardless of the rate of return on the City's retirement fund. Last summer, the City Council enacted an ordinance which eliminated DROP for all City employees hired after July 1, 2005.

**Retroactive Benefits**

Retroactive pension benefits were granted to City employees by the City Council when the retirement factor—the per year percentage of an employees' highest salary used to calculate their retirement benefit—was increased in 1996, 2000, and 2002. The increased factor was applied retroactively to those years an employee worked before the increase occurred, but it was never funded.

The City Attorney contends that the City should only provide a retirement benefit that was actually earned by an employee.

**Pension Lawsuit**

In August 2005, the City challenged the San Diego City Employees' Retirement System's (SDCERS) lawsuit, contesting pension benefits that were granted without funding. The unions joined in the SDCERS' lawsuit against the City.

In January 2007, Superior Court Judge Jeffrey B. Barton issued his final statement of decision in Phase 1 of the trial, which declared that the majority of pension benefits granted to City employees in 1996 and 2002 cannot be reversed because of subsequent legal settlement *(Corbett and Gleason)* agreements.

City Attorney Aguirre immediately filed a petition for peremptory writ of mandate with the 4th District Court of Appeal to overturn a lower court's ruling.

Arguments contained in the writ challenged the lower court's ruling which disregarded California's Section 1090 conflict-of-interest violations which occurred when pension board members voted in 1996 and 2002 to allow the City to underfund the pension system in exchange for personal pension benefit enhancements.

The petition also contended that the lower court completely misread California's debt limit laws that provide that no city, "shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year" without a two-thirds vote of the electorate.

The writ was denied. Phase 2 of the trial has been postponed pending further motion hearings.

According to Aguirre, the current combined pension ($1.4 billion) and city employee health benefit ($1.4 billion) debts amount to $3 billion, equaling $12,000 per household within the City of San Diego.

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**1200 Third Avenue, Suite 1620, San Diego, California 92101-4188 (619) 236-6220**